

**AMENDMENT 1  
MEMORANDUM OF AGREEMENT  
BETWEEN THE  
CONFEDERATED TRIBES OF THE COLVILLE INDIAN RESERVATION  
AND  
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGARDING THE SITE INVESTIGATION OF THE  
UPPER COLUMBIA RIVER SITE  
AND OTHER SITES**

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**I. RECITALS**

The parties to this Memorandum of Agreement ("MOA") are the Confederated Tribes of the Colville Indian Reservation ("CCT") and the U S Environmental Protection Agency ("EPA") (collectively referred to as "the Parties") The CCT is a sovereign Indian Tribe whose government is recognized by the United States. The CCT is also a natural resource trustee under applicable Federal and Tribal law. EPA is the principal federal agency responsible for implementation of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U S C. Section 9601-9675 ("CERCLA"), including conducting preliminary assessments ("PA") and site investigations ("SI") of the hazards to public health and the environment which are associated with such release or threatened release of a hazardous substance, pollutant, or contaminant

This Amendment is intended to provide a framework for good faith government-to-government coordination for the SI activities conducted at the Upper Columbia River site ("the Site") and associated mines/mills This Amendment is also intended to ensure that EPA fulfills its responsibility to consult with CCT prior to taking action that may impact their reservation or treaty resources. EPA acknowledges and affirms its responsibility to assist in the protection of the environmental interests of the CCT when administering federal environmental laws The parties acknowledge that additional sites may be added to the list presented in Section I of this Amendment

The "General Terms of Agreement" for PA activities, as described in the existing MOA, shall apply to those sites identified in CCT's letter to EPA dated August 2, 2000 CCT submitted the August 2 letter identifying additional sites for assessment under CERCLA in conjunction with its initial Petition letter dated August 5, 1999.

The Parties are engaged in a government-to-government relationship, as elaborated upon in federal Indian policy, Executive Order 12875 (October 26, 1993), EPA Indian Policy dated November 8, 1984, and White House Directive dated April 29, 1994, 59 Fed Reg. 22951 (May 4, 1994) The CCT relationship with EPA was recognized by a Tribal Environmental Agreement ("TEA") between EPA and CCT dated October 1996.



The CCT is afforded substantially the same treatment as a state in accordance with Section 126 of CERCLA, 42 U.S.C. § 9626, and 40 C.F.R. § 300.515.

The United States, including EPA, has a trust responsibility to Indian tribes that arises from Indian treaties, statutes, executive orders, and historical relations between the United States and Indian tribes. It is the policy of the United States to consult with tribal governments before taking actions which may affect tribal rights and resources. In keeping with the principle of Indian self-government, EPA recognizes CCT as the appropriate non-federal party for making decisions and carrying out program responsibilities affecting the Reservation, the Reservation Environment, and the health and welfare of the Reservation populace. Therefore, in consulting with the CCT on PA and SI activities at the identified sites, EPA is acting on its own behalf in accordance with its trust responsibility.

Additionally, EPA is committed to administering environmental laws and implementing regulations to assure that environmental justice is secured for all communities and persons, and recognizes the need to ensure greater participation in Agency decision making of affected minority communities such as CCT that are impacted by pollution.

## **II. Factual Background**

By letter dated August 5, 1999, CCT submitted to EPA a Petition pursuant to Section 105(d) of CERCLA, 42 U.S.C. § 9605(d). The petition requested that EPA conduct a Preliminary Assessment of the hazards to public health and the environment which are associated with a release or threatened release of a hazardous substance, pollutant, or contaminant on lands which include the Colville Reservation and the Upper Columbia River Basin from the Canadian Border, southward through Lake Roosevelt, to the Grand Coulee dam, encompassing the water, river- and lake-beds, and banks. The Petition also identified other mines and mills for assessment under CERCLA. As of January 2001, CERCLA PAs were completed at all of the sites identified in CCT's Petition of August 1999. Tribal input and comments on the draft PA reports were submitted to EPA in accordance with the general terms of the existing MOA and as agreed upon between CCT and EPA representatives. Agency findings and recommendations were communicated to CCT on a site-by-site basis. For those sites and any other additional sites requiring additional investigation under CERCLA, CCT involvement in the SI process shall include.

- the opportunity to accompany EPA and its authorized representatives during reconnaissance and sampling visits to the Upper Columbia River/Lake Roosevelt site and other associated mines/mills as agreed upon by the EPA Site Assessment Manager,
- notification by EPA of scoping/sampling strategy meetings for those sites warranting a CERCLA SI, and the opportunity to participate in those meetings,

- the opportunity to review and comment on draft site-specific Sampling and Quality Assurance Plans; and
- the opportunity to review and comment on the draft SI report for the Upper Columbia River/Lake Roosevelt site and other pertinent draft SI reports that may follow

### III. AUTHORITY

EPA enters into this MOA Amendment in furtherance of its responsibilities with regard to implementation of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), as amended, 42 U.S.C. §§ 9601 *et seq.*, including its duties under 42 U.S.C. § 9605(d). The CCT enters into this MOA Amendment in furtherance of fulfilling its direct responsibility to the CCT and its members to protect the health of all people who work or reside within the exterior boundaries of the Colville Indian Reservation to protect the quality of the lands, water, and resources that comprise the "Reservation Environment" and to protect those areas outside the Reservation boundaries in which the CCT has rights and entitlements under federal law. CCT is also a natural resource trustee under applicable Federal and Tribal law, and enters into this MOA Amendment in furtherance of its responsibilities to evaluate, and, if appropriate, assert claims for injury to, destruction of, or loss of use of natural resources, including, but not limited to, the restoration, rehabilitation, replacement, or acquisition of equivalent natural resources and the recovery for lost use and non-use values of injured natural resources 40 C.F.R. 300.300 *et seq.*

### IV. GENERAL TERMS OF AGREEMENT

#### 1. Communication

1.1 Written Communications. Written communications, other than internal communications within CCT or EPA, regarding activities under this MOA Amendment shall be sent to the following key contacts

For CCT      Patti Stone, Water Quality Coordinator  
Coville Confederated Tribes  
Office of Environmental Trust  
P.O. Box 150  
Nespelem, WA 99155

For EPA:      Monica Tonel, Site Assessment Manager  
U. S. Environmental Protection Agency  
1200 Sixth Avenue (ECL-115)  
Seattle, WA 98101

The CCT and EPA will inform each other in writing in the event that a different key contact is designated. Communication with additional parties, for example, other EPA Site Assessment Managers, will be worked out by the key contacts and outlined in writing.

## 1.2 Meetings.

The Tribe will have the opportunity to attend, in person or via conference call, site-specific scoping/sampling strategy meetings. The respective EPA Site Assessment Manager will take the lead in working with the Tribe to set the date and time of the meeting/conference call.

At the request of the Tribe, the parties will meet or hold a conference call to discuss any comments submitted by the Tribe on draft Sampling and Quality Assurance Plans ("SQAP"), SI technical data or draft Site Investigation ("SI") reports. The key contact for EPA will take the lead in arranging these meetings and conference calls. These meetings and conference calls will occur prior to EPA issuing final SQAPs or SI reports.

The key contacts may engage in regular or more frequent calls as needed at the request of any of the Parties.

## **2. Public Participation.**

EPA is responsible for undertaking community relations activities that relate to the Superfund response at the sites identified in Section I of this Amendment, in accordance with CERCLA, the NCP, and EPA policy and guidance. The parties acknowledge the interest of the public in the assessment and evaluation of impacts associated with the release or potential release of hazardous substances to the environment. As such, the parties will coordinate their endeavor to keep the public advised of the progress of the PA and SI activities, consistent with applicable law. In furtherance of this, EPA will work through the Tribe in communicating the progress of the PA and SI activities to Tribal members or other groups.

## **3. Confidentiality.**

The Parties agree that sharing information related to the sites will best enable EPA to satisfy its trust and legal obligations and responsibilities to the Tribe while conducting the PAs and SIs. The Parties intend to exchange information as part of the process of government-to-government consultation concerning response actions at the sites and during the potential development of enforcement actions against potentially responsible parties.

In order to promote meaningful consultation, the parties intend to keep certain information shared under this Amendment confidential and will seek to protect such information from disclosure and discovery through the use of various privileges and exceptions, including but not limited to, the attorney-client, deliberative process, and attorney work product privileges. To avoid interference with a potential enforcement proceeding in which the parties have a common interest, the parties will protect from disclosure any law enforcement records exchanged in anticipation of litigation. The parties agree to maintain any and all rights and privileges, to the extent permitted by law, including the Freedom of Information Act, 5 U.S.C. § 552, that may pertain to any shared information.

Whenever sharing information deemed confidential, the party shall clearly mark any information to which it asserts a privilege as “Privileged and Confidential Information – Do Not Release Without Authorization.” The party receiving information so marked agrees not to release, or allow to be released, such information to a non-party, to the extent permitted by law. The parties agree that failure to so mark information developed or shared under this Amendment does not preclude the parties from asserting the protections under the Freedom of Information Act or from asserting privileges and exceptions in seeking to protect the information from discovery.

The Tribe may request that its comments on draft sampling plans or reports be withheld from public disclosure. EPA agrees to protect the confidentiality of the comments to the extent permitted by applicable law, including FOIA.


#### **4. Access**

The Tribe acknowledges that, under federal laws, EPA has the right to access the sites for purposes of carrying out CERCLA response activities. The Tribe acknowledges that EPA seeks written or verbal consent from property owners to giving the EPA and its authorized representatives or contractors access to the properties being assessed. When requesting access to the sites, EPA and/or the EPA contractor will also seek consent for access for Tribal representatives. The CCT contact will be informed of those sites where access to Tribal representatives is granted and of those sites where consent for access is given only to EPA and its authorized contractors.

For reconnaissance/sampling visits to sites or portions of sites that are under Tribal jurisdiction, the Tribe will be given early notice of those visits and will be afforded the opportunity to be present.

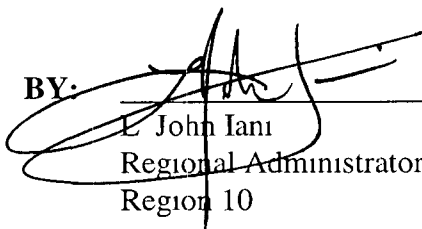
**THE UNDERSIGNED PARTIES enter into this Amendment to the Memorandum of Agreement between the Confederated Tribes of the Colville Indian Reservation and the U.S. Environmental Protection Agency regarding implementation of the Superfund Program.**

**CONFEDERATED TRIBES OF THE COLVILLE INDIAN RESERVATION**

BY:   
Colleen Cawston  
Chairperson *E.D.*

11-1-01  
Date

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

BY:   
E. John Iani  
Regional Administrator  
Region 10

10-18-01  
Date

## Section I

List of sites with on-going site investigation (SI) activities,  
as of October 2001:

<b>SITE NAME</b>	<b>LOCATION</b>	<b>EPA CERCLIS ID#</b>
Upper Columbia River	Northeast WA	WASFN1002167
Grandview Mine	Metalline Falls, WA	WASFN1002165
Last Chance Mine	Stevens County, WA	WASFN1002162
Le Roi Co. Smelter	Northport, WA	WAD988507323
Pend Oreille Mine	Metalline Falls, WA	WASFN1002160

List of sites needing an SI start, as of October 2001:

<b>SITE NAME</b>	<b>LOCATION</b>	<b>EPA CERCLIS ID#</b>
Knob Hill Mine	Republic, WA	WAD980988075

List of sites needing a Preliminary Assessment (PA) start,  
as of October 2001:

Mountain Lion Mine/Mill	San Poil River, WA
Hecla Concentrator	Republic, WA
Republic Concentrator	Granite Creek, WA
NWP&R Co.	near Republic, WA